1948.

File No. O. Def. of India 48

Legal Deptt.

A **BRANCH**

Subject:— O. Def. of India

Opinions under the Defence of India Act 1939 and rules made thereunder.

P 24
of E

File No. O. Def. of India 48

CONTENTS.

Legal Department File No. C. Def. of I/1948

Sr. No.	R. I. / C. No.	Subject	Pages.
1.	H.P. Cir. M. No. 6834/43, dated 5.1.48	Lands - Def. of India Rules 1939 Acquisition of -	1.
2.	CM. 379 3.1.48	Def of I. Rules - Rule 26 of - Fixation of compensation for a motor launch requisitioned by the Central Government -	3-4.
3.	CM. 434 14.1.48	Def. of I. Rules 1939 Rule 26- Appointment of Arbitrator for determining the compensation -	5-7.
4.	CM. 578 10.1.48	Whether there is any objn to publishing a corrigendum amending the award published in the Gazette -	9.
5.	CM. 749 21.1.48	Eviction by physical force of persons occupying requisitioned premises -	11-13.
6.	CM. 778 22.1.48	Payment of compensation for requisitioned property- Execution of agreement -	15-17.
7.	CM. 648 19.1.48	Def. of India Rules 1939- Rule 114 (1)(a) Disposal of enemy held property -	19-20.
8.	C.M. 532 23.1.48	Def. of India Rules - 1939-Repairs to electric installation in requisitioned premises -	21-22.
9.	CM. 823 23.1.48	Def. of India Rules - Compensation payable to non-agricultural use of Agricultural Lands -	23-25.

KVT. 1.8.

Sr. No.	R.I. /G.O. No.	Subject	Pages.
10.	40-Confl. ON./~~122~~ 23-1-48	Whether the seizing of articles by Police was illegal as the premises of Bombay Provincial Forward Block were not notified under Sec 17 A of the Cr. Law Amendment Act -	27-28.
11.	ON. 1958 27-2-48	Def. O I. Rules - Rule 81(2) (bb) whether any legal action can be taken against Government for failure to hand over formal possession of the premises to the Owner sub-segment to requisition	29-31.
12.	R.D. Erratum No 6824/45 dated 2-3-48	Lands -Def of I Rules Acquisition of -	33.
13.	ON. 2470 12-3-48	Def of India Rules 1939- Fees of the Arbitrator -	35-37
14.	ON. 3184 2-4-48	Def. of India Rules - Rule 81(2) - whether the Landlord can demand increase in rent -	39-41
15.	R.D. Endt. Confl. No. 7556/29/VIII-A dated 13-5-48-	Compensation for cost of moving back when property is derequisitioned -	43-47
16.	ON. 4268 3-5-48	Whether the Mill-owner can be prosecuted for the installation of the country Ghanies in the same premises	49-51
17.	ON. 4421 7-5-48	Adjudication - Interim order ineffective on passing the final award in the BEST dispute -	53-5[illegible]

C O N T E N T S.

Legal Department File No. C. Def. of I/1946

Sr. No.	R. I. / C. No.	Subject	Pages.
18.	CR. 5982 30-5-46	Def. of India Rules 1939-Rule 119- Mode of publishing press notes for the information of the Public reduction of evidence in the Court -	57-59.
19.	CR. 6062 18-6-46	Def. of India Rules - and Rent Acts - Basis of compensation for requisitioned premises.	61-63.
20.	CR. 6139 1-7-46	Def. of India Rules - Rule 59 - Assessment and payment of compensation -	65-67.
21.	CR. 7164 30-7-46	Sec 10(1) - If the Land Owner or Land lord is not agreeable to the amount of compensation whether he can apply for a reference to arbitrator -	69-73.
22.	CR. 7416 29-7-46	C.M.P.O(2) Order No. 57(C)/IV-C dated 25-1-45 as amended at 17-3-45 whether the action of the hotel-keeper in using only a portion of C.M.P. in tea or coffee to be served in his establishment is in contravention of the above orders .	75-77.
23.	CR. 8212 29-9-46	Def. of Indian Act - Sec 10(1) - Payment of interest on compensation awarded -	79-81.

1516
K.S.R.
1516

Submitted.

In his letter dated 3-12-47 at p. 45 ante the Collector of Nasik has stated as follows:-

"In the circumstances, the claims will have to be settled by Government in the manner laid down in Government of India, Defence Department (Army Branch) No. 5028-D.10/47, dated 23-7-47 (p. 1 ante). It appears that they are to be settled under Rule 96 of the Defence of India Rules. Powers under this Rule do not appear to have been delegated to the Collectors. However from para. 4 of G. R., R. D., No. 7556/39-III (Confl.) dated 7-8-1942, it appears that Collectors can negotiate in such cases. However no notifications delegating these powers to the Collectors is forthcoming. In the circumstances the cases will have now to be submitted to Government."

As regards this contention of the Collector, R.D. proposes to invite his attention to Government of India, Defence Department, Notification No. 1514-OR/42, dated the 1st August 1942 (p.65). The Addl. Under Secretary R.D. however desires to know whether in view of the notification any other specific delegation of powers is necessary (vide p. 49 ante). The papers have been accordingly referred to R.L.A. for advice.

From Government of India, Defence Deptt. Notification, No. 1514-OR/42, dated the 1st

August 1942, printed as an accompaniment to G.R., R.D., No. 7556/39-III-Confl., dated 7-8-1942 (p.55 ante) it is clear that Collector can execute the instrument relating to or arising out of any orders in respect of which compensation is payable under Rule 96 of the Defence of India Rules and no fresh delegation would be necessary. However, the compensation payable would have to be sanctioned by the Provincial Government in view of the Government of India letter dated 28-7-1947 at p. 1 ante. In view of this clear position, difficulty experienced by the Collector or R.D. is not understood.

Reply may be :-

Seen and returned

The authorizations issued by Govt. of India would be sufficient for the purpose

Sd. R.T.K. 8/1

Sd/- R.M.Lad, 8/1

Remembrancer of Legal Affairs.

U. R. to R.D. No. 279, dated 9-1-1948.

EVY. 31/5.

S.D.R.I. No. 267 dated 9-1-48.

Submitted.

The Government of India requested this Government to issue and order under Defence of India Rule 96 appointing an arbitrator to decide the compensation for a motor launch which was requisitioned by the Central Government. In connection with this request R.L.A. pointed out in his opinion No. 8013 dated 4-8-47 that the Provincial Government will be unable to appoint the arbitrator unless the power of Central Government under rule 96 is delegated to it (vide opinion at p. 38 ante). This Government accordingly wrote to the Government of India in the matter requesting delegation of power but that letter has still remained unanswered. The party concerned has now given a threat that unless an arbitrator is appointed within 15 days from the date of the receipt of his letter he will move the High Court under the Specific Relief Act or take such other proceedings as he may be advised (vide letter dated 18-12-47 at pp. 61-62 ante). The papers are being shown to HK R.L.A. on account of the threat contained in the letter (vide p. 63 ante).

Id mh. Papers may be seen and returned.

A.A.S.

R.L.A's opinion is not asked for, the papers ~~paers~~ are shown to R.L.A. with reference to the last ~~part~~ para of the Solicitors letter. The papers may be "Seen and returned".

Id mh

A.L.N. Reply may be:-

The ~~xxx~~ Solicitors may be informed that the question as to which authority whether the Central Government or the Provincial Government can ap-oint the arbitrator is pending the consideration of Government and as soon as that point is settled, Ste-s will be taken to ap-oint the ~~arbitrator~~ arbitrator.

Sd/- P. M. LAD, 12/1

REMEMBRANCER OF LEGAL AFFAIRS.

EVY. 31/5.

Office of the R.L.A.

Appointment of arbitrator

Defence of India Rules, 1939 Rule 86.

The Solicitors may be informed that the question as to which authority, whether the Central Government or the Provincial Government, can appoint the arbitrator is pending the consideration of Government and as soon as that point is settled, steps will be taken to appoint the arbitrator.

Sd/- P.M. Lad, 14/1

Remembrancer of Legal Affairs.

R. to H. D. No. 434, dated the 14th January 1943.

XVX. 31/5.

R.I. No. 459 dated 13.1.48.

Submitted.

The interim award was published in the Gazette on 12th August 1947 and it was made binding by an order issued on the same date. Subsequently the adjudicator forwarded a corrigendum to the award amending para 21 of the award. The R.L.A. in his opinion No. 12050, dated the 15th December 1947 advised that the since corrigendum rectifies a clerical omission there is no objection to amending a award and to publishing the same. The Joint Secretary P. & S.D. now requests the R.L.A. to advise whether the corrigendum has to be made binding by separate order.

3. In his opinion No. 12050, dated the 15th December 1947, the R.L.A. opined that since the corrigendum rectifies a clerical omission there is no objection to amending the award and to publishing the corrigendum. The corrigendum is intended to carry out only a clerical mistake in the award. It is not therefore necessary to make the corrigendum binding by a separate order.

Id 15/1
A.L.R I agree. A - A may be the reply.

Id. R-FK 15/1

Sd/- P.M. LAD, 15/1
Remembrancer of Legal Affairs.

U. R. to P. & S. D. No. 576, dated the 16th January 1948.

EVT. 31/5.

R.I. No. 459 dated 13-1-48.

Submitted.

The interim award was published in the Gazette on 12th August 1947 and it was made binding by an order issued on the same date. Subsequently the adjudicator forwarded a corrigendum to the award amending para 21 of the award. The L.A. in his opinion No. 12050, dated the 15th December 1947 advised that the since corrigendum rectifies a clerical omission there is no objection to amending a award and to publishing the same. The Joint Secretary P. & S.D. now requests the R.L.A. to advise whether the corrigendum has to be made binding by separate order.

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Id 15/1
A.L.R

I agree. A - A may be the reply.

Id. R.F.K
15/1

Sd/- P.M. LAD, 15/1
Secretary of Legal Affairs.

U. S. to P. & S. D. No. 576, dated the 16th January 1948.

SVI. 31/5.

Submitted.

2. Please see R.L.A's opinion No. 4183, dated the 24th April 1947 wherein the R.L.A. had advised the R.D. to have recourse to section 41 of the Presidency Small Cause Courts Act, 1882 for evicting some persons of the A.E.S. personnel occupying certain rooms in the Khandalwa Mansion, Sewri, after it was derequisitioned before applying to the Court of Small Causes, Government recommended the Land Lord to accept those persons as his tenants. The landlord however refused to accept them as tenants on the ground that several of them have used the premises in objectionable ways and have passed their tenancy to outsiders at some consideration (pagri). The papers are referred to the R.L.A. for opinion as to the status of the persons now occupying the derequisitioned premises as to whether they are trespassers, or mere licensees at will or tenants holding over and whether since they are alleged to have misused the property they could be evicted by use of reasonable physical or police force for the defence of property.

3. The Khandalwa Mansion, Sewari, was requisitioned under rule 75-A of the Defence of India Rules and as advised in R.L.A.'s opinion No. 4183 dated 24-4-47 Government was bound to give vacant possession of the same to the landlord. Unlike an order under rule 81 (2) a requisition order under rule 75-A of the Defence of India Rules does not create the relation of landlord and tenant. Under the said rule 75-A the appropriate authority is empowered to requisition property and if the requisition is of premises in the occupancy of a tenant the effect is to deprive him temporarily of one of his rights i.e. right to physical occupation

(Advocate General's opinion No. 32 of 1945(, By analogy, if it be in the occupation of the landlord his right to physically occupy is taken away during the period of the requisition. On derequisition of the premises which has the effect of restoring the right to physically occupy the premises to the landlord Government was liable to give vacant possession of the premises to him; And thereafter in the absence of any agreement between the tenants theretofore staying and the landlord the occupation by the said persons became illegal.

"To prove the offence of trespass under section 441 I.P.C. against the persons in possession of derequisitioned premises what is necessary to establish is that these persons having lawfully entered into or upon the premises unlawfully remained there with intent thereby to insult or annoy any such person (i.e. any person in possession) or with intent to commit an offence. It is true that these persons lawfully entered into or upon the premises; but unless Government put some other persons or persons in possession of these premises, they cannot be said to have unlawfully remained there with intent thereby to intimidate etc. Nor can they be said to have so remained with intent to commit an offence."(R.L.A's opinion No. 225 dated 24-10-47 to H.M. C.S.D.).

There being no tenancy neither during the continuance of the requisition nor subsequently the continued stay of the A.F.S. personnel cannot be considered as one of tenants holding over. There is no transfer of interest in license although the licensee acquires a right to occupy the land (Secretary of State vs. Karunkhuda and ant 35 Cal. 82(92)F.B) and besides this right is a personal one and it cannot be transferred to others. But the position of persons staying in requisitioned premises is like that of a licensess. Apart from

the question whether the A.F.S personnel or their assignees staying in the Khandalwa Mansion after its derequisition are trespassers, tenants holding over, or licensees at will, it is not understood how the R.D. wants to exercise the right of private defence of property by using reasonable police force to evict these persons. It would create unnecessary complications. R.D. may therefore be advised to follow the course proposed in R.L.A's opinion No. 4183, dated 24-4-1947 in cases of persons who are reported to have occupied after ~~xxxx~~ payment of pagri and misused the premises.

EVT. 1/6.

Office of the R.L.A.

Eviction by physical force of persons occupying requisitioned premises.

R.L.A.'s opinion No. 4183, dated 24.4.47.

The occupation by persons of requisitioned premises would be by leave and license and on a notice being given to them to vacate the premises the license would be deemed to be revoked and they would be liable to be evicted by due process of law provided they fail to vacate voluntarily. But they cannot be evicted by any physical force nor would they be liable to be prosecuted as trespassers. Steps should therefore be taken to evict these occupants through court and give vacant possession to the landlord.

Sd/- P.N. LAD, 19'1
Remembrancer of Legal Affairs.

U. O. to R.D., No. 748, dated the 21st January 1948.

RVI. 31/6.

Submitted. R.I. No. 13154 — 13-1-47.

3. The Collr. of Thana in his report at p. 15 ante states that certain lands belonging to one Mr. B.T. Gawankar and 4 others in village Navghar in the Bassein Taluka have been acquired under the Defence of India Rules for the Forest Department. The compensation payable in respect of the land under sec. 19 of the Defence of India Act, has been paid to all persons other than Mr. Gawankar, who in his petition dated 4-10-46, request that instead of acquiring the land and compensating him the land should be returned to him for reasons stated therein. The R.D. proposes to refuse his request unless in case he disputes the amount of compensation fixed in which case the Collr. is being asked to inform the applicant to apply for arbitration. As regards the 4 others to whom compensation has been paid the R.D. is not sure whether the agreements in the prescribed forms have been taken from them and is of opinion that there would be no legal objection in doing so, now, i.e. after the compensation has been already paid

The R.L.A. is requested to confirm the view taken by the R.D.

Dd 19/1

Papers may be "seen and returned"

Sd/- R.M. - 20/1.

EVY. 1/2.

R.L.A. P.M.L. - 20/1

U. R. to R.D. No. 778 dated 21-1-1948.

Office of the R.L.A.

Disposal of Ex-enemy held property - Menkwa Building

Defence of India Rules, 1939.

The only legal point raised in para. 2 of R.D. office note at p. 27 ante is whether any permanent disposition off the property would be permissible at this stage when it is an ex-enemy held property.

Clause (d) of rule 114(1) of the Defence of India Rules provides ;

"With a view to preventing the payment of money to an enemy firm and preserving enemy property in contemplation of arrangements to be made at the conclusion of peace the Central Government may appoint a custodian of enemy property for British India etc. and may by order —

confer and impose on the custodian and on any other authority/person such right, powers, duties and liabilities as may be prescribed as respects -

(i) Property which has been or is required to be vested in the custodian by or under the order,

(ii) property of which the right of transfer has been or is required to be, so vested,

(iii)

(iv)

This provision and the orders made thereunder have been continued by virue of the Trading with the Enemy (Continuance or Emergency Provisions) Act, 1947. No copy of the order made under rule 114 is among the papers forwarded to L.D. Nor is it known what right, powers, duties and liabilities of the Custodian of this property have been prescribed by the Central Government by order made under rule 114

No peace with Japan has yet been concluded. Consequently R.D. may consult the Central Government on the point whether pending the conclusion of peace with Japan a permanent disposition by the Custodian of Enemy property of this property would be permissible under the terms of the order made under rule 114 of the Defence of India Rules.

Sd/- P.M. LAD. 17/1

Remembrancer of Legal Affairs.

U. R. to R.D. No. 646, dated the 19th January 1948.

EVY. 1/6.

Office of the R.L.A.

Repairs to electric installation in requisitioned premises.

Defence of India Rules, & 1939. and Bombay Rents Hotel and Leding House Rates Control Act, 1947.

R.L.A's opinions No. 4934, dated 4-7-1945 No. 5677, dated 16-8-46 and No. 2013, dated 28-2-47.

The Collector of Bombay requisitioned, under Rule 75A of the Defence of India Rules, a flat in Ratnagiri House and it was allotted to Rao Saheb (now Rao Bahadur) Cadkary. The rent of the flat was fixed at Rs. 115/- p.m. and Rao Saheb Cadkary was asked to pay it direct to the Managing trustee of the building (vide p. 21 ante). In October 1947, the electric installation in the flat was found to be defective and on this account, the B.E.S.T. refused to supply electricity to the premises occupied by R.B. Cadkary. Rao Bahadur Cadkary negotiated with the managing trustee requesting him to replace the installation but he flatly refused to do so stating at the same time that it was for R.B. Cadkary himself to maintain the installation in proper working order (vide pp. 1-3 ante). As the landlord - trustee refuses to comply, the P.W.D. has now proposed-

(1) to authorise the Collector to replace the installation through the Electric Engineer to Government and to recover the cost from the rent payable by R.B. to the landlord; and

(2) to instruct Rao Bahadur to pay rent to the Collector and not to the landlord direct.

The Solicitor in Legal Department is requested to advise on the legality of the course proposed.

2. As pointed out in R.L.A's opinion No. 4934, dated 4th July 1945, there is no liability on the landlord to carry out repairs in the requisitioned premises. In the

circumstances, it will not be possible for Government to compel the landlord to replace the damaged electric installation. Further if Government elects to carry out the repairs itself it will not be possible to recover expenses from the owner because under the terms of the requisition order Government have undertaken the liability to restore the premises in the condition in which they were at the date of requisition (vide R.L.A's opinion No. 2013, dated ~~x~~ 28-2-1947). In the circumstances, the course proposed by P.W.D. would not be legally feasible. It is also doubtful whether the provisions of the New Rent Control Act of 1947 will be of any help in compelling the Trustee to carry out the repairs (Cf. R.L.A's opinion No. 5697, dated 16-8-1946).

Sd/- R.T.K.

for Remembrancer of Legal Affairs.

U. R. to P.W.D. No. 839, dated the 23rd January 1948.

EVY. 1/6.

Office of the R.L.A.

Compensation payable for N.A. use of Agricultural land

Defence of India Act and the Rules.

Government is entitled to use a requisitioned agricultural land even for a non-agricultural purpose (see rule 75-A(2) of the Defence of India Rules); and the compensation under section 19 of the Defence of India Act is not required to be determined with reference to the use to which the requisitioned land is to be put by Government. Consequently the applicant's claim for higher compensation on the basis of the non-agricultural use of his requisitioned land would not be legally tenable. If he has agreed to accept the compensation already determined, there would arise no question of making a reference for arbitration.

Sd/- R.T.K.

for Remembrancer of Legal Affairs.

U. R. to R.D., No. 823, dated the 23rd January 1948

RVY. 1/2.

R.I. No. 369-Confl., dated 10-12-47.

Submitted.

The General Secretary of the Bombay Provincial Forward Bloc has reported to Government that on 23rd June 1942, the office of the Bloc situated at 43 Kennedy Bridge was searched by the Police and all the property therein was taken away. He states further that after removal of the ban on the party in 1946 some property was restored but one table and two chairs have not as yet been returned. In the circumstances he requests that either these articles should be returned or compensation should be paid for them.

The circumstances in which police took the action are explained in the endorsement of the Commissioner of Police at pp. 15-16 ante and the Home Department considers that the action of the Police in seizing the articles was illegal as the premises of the Block were not notified under Sec. 17A of the Criminal Law Amendment Act (vide p. 19 ante). The R.L.A. is requested to advise whether this view is correct.

Dd 26/1

A-L-R

See and returned.

The view taken by H.D. (Confl) is correct.

R-T-K 2/1

Sd/- P.M. LAD, 2/1

Remembrancer of Legal Affairs.

R.A. to H.D.(Confl.) No. 40-Confl. dated 23-1-1948.

EVI. 1/8.

Office of the R.D.A.

Formal possession should have been handed over to the owner of the dercquisitioned premises and immediately thereafter an order under rule 81(2)(bb) of the Defence of India Rules should have been served on him. In the present case no such possession was given to the owner. It is now too late to mend this irregularity. Consequently the Revenue Department may at this stage merely draw the attention of the Solicitors of the owner of the premises to the Collector's letter dated the 17th March 1947 at page 60 ante which sums up the case for Government in the event of any legal action.

Sd/- P. M. DAD,
26/2
Remembrancer of Legal Affairs.

U.S. to R.D., No. 1958, dated the 27th February 1948.

EVY. 1/3.

Office of the D.L.A.

Fees of the Arbitrator Defence of India Act, 1939.

D.L.A.'s No. 5648, dated 31-7-1945.

Attention of the Civil Supplies Department is invited to D.L.A's opinion No. 5648, dated the 31st July 1945 a copy of which is herewith forwarded.

Sd/- P.N. Lal,
11/3

Remembrancer of Legal Affairs.

U.O. to C.S.D. No. 3470, dated the 12th March 1946.

Submitted for signature.

S.O.2.
11/3.

A.A.S. Sd/-
11/3

A.L.R. Sd/- R.N.
11/3.

Issued

S.S.P.
12/3.

EVI. 1/3.

Office of the R.L.A.

Increase in Rent.

Defence of India Rules, rule 81(2).

R.L.A's opinion No. 0684, dated 3-10-1947.

The landlord in the present case would not be entitled to demand for the period from 1-4-1945 to 30-9-1946 an increase in rent in an excess of that permissible under the order No. W.A.R. 337 dated 18-3-1942 issued by the District Magistrate, Thana, under rule 81(2) of the Defence of India Rules.

Sd/- P.M., Ind. 1/4

Remembrancer of Legal Affairs.

U.R. to E. & I.D., No. 3184, dated the 2nd April 1948.

Submitted for signature

Id/- 1/4

A.A.S. C.L.
1/4

A.L.R. R.K.
1/4

Issued

C.S.P.
2/4

EVT. 1/5.

Office of the R.L.M.

The installation of the Country Ghanies in x the same premises is merely a device intended to xx circumvent the orders passed by Government. The mill-owners should be prosecuted. There is a fair chance of Courts holding in favour of the prose-cution on the ground that so long as the person is in charge of an oil Mill run on power machinery, the installation of country ghanies would not take his case outside the prohibition.

Sd/- M P. M. LAD, 11/5

Remembrancer of Legal Affairs.

U.R. to A7R.D. No. 4268, dated the 3rd May 1943.

Submitted for signature.

Id/- 30/4

A.A.S. G.L.
30/4

Issued A.L.R. R.K.
3/5

C.S.P.
3/5.

EVY. 1/6.

Adjudication
Interim order ineffective on passing the final award in the B.E.S.T. dispute.

The General Secretary, B.E.S.T. workers Union Bombay, complained to H.E. Labour that the recommendation made by Sir Harshidbhai Devetia in his award dated 19-11-1947, in the trade dispute between the B.E.S.T. Co. Ltd., Bombay, and its employees in respect of age restriction and gratuity was not accepted by the Board of Directors of the Company and therefore the liquidators are unable to accept. The Liquidators of the B.E.S.T. Co., Ltd. (in voluntary liquidation) were pointed out that the recommendations of the award are no longer recommendatory but binding by reason of Government Orders, P. and S.D. No. 5907/34-I, II and III, dated 17th December 1947, and therefore they must honour the company's liability in this behalf and the refusal to do so is a contravention of an award which incurs consequence provided under the said Order. Messrs. Captain and Vaidya, Solicitors, on behalf of the liquidators point out that the assumptions made in Government letter based on the letter of the General Secretary B.E.S.T. Works Union are not correct, that the employees by their demand No. 7, which was referred by Government for adjudication wanted the age restriction as to the benefit of gratuity to ~~the~~ be removed; that by his Award dated 10th November 1947 (B.G.G. Extraordinary, P. 4514) the Adjudicator in para. 22 of his Award has categorically rejected the same demand of the employe

and therefore Government has no power to enforce a demand not conceoded by the Adjudicator. P. and S.D. is of the view that the Adjudicator recommended that the company should pay gratuity on retirement basis to such employees and that the recommendation is no longer recommendatory but binding in view of Government Order No. 5907/34, dated 17th December 1947. As the question is not free from doubt the B.B.A. is requested urgently to state whether the view taken in Labour Department letter dated the 7th April 1948 at p. 29 ante is correct and if so, whether the employees in question are entitled to gratutity as recommended.

2. By P. and S.D. Notification No. 5907/34-II, dated 20-3-1947, the dispute between the B.E.S.T. Co. Ltd., and its non-scheduled employees was referred to adjudication under sub-rule (1) of rule 81-A of the Defence of India Rules as continued in force by section 2 of the Emergency Provisions (Continuance) Ordinance, 1946, Demand No. VII of the employees referred to adjudication was as follows:-

> "VII. Gratuity:- (1) The age restriction as to the benefit of the amount of gratutity should be removed.
>
> (2) On the eve of the winding up of the Company Gratuity should be given to each employee of the Company at the rate of one month's salary for each year of completed service, provided that th maximum amount of such Gratuity should not exceed Rs. 5,000 in the agregate or 15 months' salary, whichever is less; and provided further that the minimum amount of such gratuity shall not be less than Rs. 500 in case the employees who have served

the Com any for a eriod of 15 years of more. In the Adjudication Award No. Agr. 13 of 1947 the said demand was rejected by the Adjudicator as the trustee in whom the amount of gratuity and rovident fund are vested were not represented in these proceedings. He however stated further that as the Company was to be handed over to the Corporation on the 7th August 1947 he passed an interim order on that day recommending that the com any should pay gratuity on retirement basis to employees under 55 years of age and who did not continue in serving after the Corporation took over the B.E.S.T. Although the Adjudicator passed an interim order recommending that such employees should get gratuity on retirement basis he rejected the demand totally in the final award dated the 19th November 1947. This also ap ears from the Award of the same Adjudicator in res ect of the dis ute referred to him between the Com any and the scheduled em loyees, where in aragra h 8, the Adjudicator rejected the said demand as the demand was ractically the same as made by the non-scheduled employee The interim order of the Adj dicator which he made on 7-8-1947 could at the most be effective until the final order is made and since in the final award the demand in question has been rejected in toto it does not a ear that the recommendation made by the Adjudicator in the interim order survived. The view taken by Messrs. Captain and Vaidya the Solicitors to the Liquidators at pages 33-37 is correct.

Sd/- P.M. LAD, 6/5
Remembrancer of Legal Affairs.

U.R. to Labour Department, No. 4421, dated the 7th May 1948.

EVY. 1/6. Submitted for signature Id/- 6/6 ALR R.E. 6/6.

Office of the R.L.A.

E.A.R.A.& P.O. 1943 Rule 119 of th Defence of India Rules.

The Essential Articles Restricted Acquisition and possession Order, 1943, was brought into force in Ahmedabad by G.N.,P.D.(S) No. 181(1-A/D1., dated 31st June 1945 issued under clause 1(3) of the said Order. This notification was published in the Bombay Government Gazette dated 31-8-45 Part I p. 1685. The Supply Commissioner who made this order directed that the mode of publicity should be that the E.A.R. A. & P.O. and the notification extending it to Ahmedabad may be published as a public notice and a press note should also be issued through the Director of Information. Under Government letter No. 181/D2/AV, dated the 21-23 June 1945, drafts of the public notice and press note were sent to the Director of Information for giving immediate publicity to the same. It now transpires that the newspapers concerned published the public notice but not the press note. The C. of R's office argues that when the Director of Information sent the press note to the various newspapers for publishing, the mode of publicity prescribed by the Supply Commissioner was fully complied with R.L.A. is requested to advise whether this view is correct.

In his opinion No. 222 269, dated 29-1-46, the R.L.A. advised that the acquittal of the accused in the case of Emp. v. Kanjibhai Devchhai on the ground of inadequate publicity of the notification applying the E.A.R.A. & P.O. to Ahmedabad, would not affect pending prosecutions which should be proceeded with and the best possible evidence regarding publication should be adduced. In this connection C.of R enquires whether the letters written by the Director of Information to the various newspapers for publishing the press note may be produced before the Courts in pending cases

He is also requested to suggest any other arguments which the prosecution may advance in these cases.

Para. I.- Under Rule 119 of the Defence of India, Rules, the officer making any order in pursuance of the Defence of India Rules is required to publish notice of such order in such manner as may, in his opinion be best suited for informing the persons to whom the order concerns. In this case, in supply Commissioner's opinion the best mode of publication of the Order was by publishing a public notice and a press note. It is for such authority to see that the mode of publicity as laid down by him is carried out. It is not sufficient to say that the public notices and the press note were sent to the newspapers. The authority should see that it was duly published In this case therefore we cannot say that the mode prescribed by the Supply Commissioner was fully complied with.

Para II:- The letters written by the Director of Information to the various newspapers asking them to publish the press note need not be produced in the court as they have very little evidentiary value. What is necessary to show is that the press note was duly published.

In the pending prosecutions the following grounds may be urged:-

(1) The provisions of Rule 119 of the Defence of India Rules apply only to orders issued under the Defence of India Rules and not to subsidiary orders or notifications made or issued in pursuance of an order made under the Defence of India Rules (A.I.R. (1946) pat. 285, GoganRam vs. Emp. 226 I.C. 316). The same view was taken by Government of India in their letter No. 5-DC(13)/45, dated 6.11.45 (Please see R.L.A'SM No. 130 Confl. dated 2-3-46 and No. 2981, dated 20-4-46). As the Notification dated 21-6-45 was issued under clause 1(3) of the E.A.R.A. & P.O. 1943, Rule 119 has no application to this case. The Publication given was a voluntary action on the part of Govt.

to give due intimation to the public.

If it is argued that though the notification was under an order issued in pursuance of the Defence of India Rules, it is only an extending notification which brought an order made under the said Rules in force in Ahmedabad and due publicity as required by Defence of India Rule 119 should have been given then the following points may be advanced:-

The mode of publicity was duly prescribed by the issuing authority namely, the Supply Commissioner and in pursuance a public notice of it was given in the various newspapers. Merely because no press note was issued it cannot be inferred that the public were not properly intimated. There is evidence of the publication of the notification in the Gazette and in the various newspapers by way of a public notice. ~~X~~ "Failure to observe the provisions of Rule 119 of the Defence of India Rules, would not necessarily be fatal to a prosecution of a person disobeying such order. It would still be open to the Crown to prove that the accused had information of the order. Nor is the validity of the order in any way affected by any defect in its publication. The onus is of course on the prosecution to prove that the accused has knowledge of the Order". (A.I.R. 1947 Cal. 418). In this case the prosecution can prove publication of the order in the Gazette and various newspapers and should demonstrate that these are newspapers which persons concerned are likely to read. Efforts might be made to prove knowledge by other evidence, if any, on the part of such persons.

P.M. LAD, 27/5
Sd/- Remembrancer of Legal Affairs.

U.O. to C. of S. No. 5069, dated the 28th May 1943.

Submitted for signature

SVY. 1/6.

Office of the R.L.A.

Basis of Compensation for requisitioned premises.

Defence of India Rules, 1939, and Rent Acts.

The standard rent of old buildings is fixed under the Rent Control Act on the basis of the rent at which the premises were let in September 1940 and not on the basis of the current market rate. Since Government has agreed to pay the owner of the bungalow No. 12, Koregaon Park compensation at the current market rate, it would be just and proper that he should be paid compensation not on the basis of the standard rent but on the basis of the market rate current between 30th June 1946 and 4th November 1946.

Sd/- P. M. LAD,
17/6
Remembrancer of Legal Affairs.

U.R. TO R.D. No. 5665, dated the 18th June 1948.

Submitted for signature.

S.O.L.
18/6
A.L.J.
A.A.S. R.K.
Id/- 17/6
17/6

Issued

C.S.
18/6.

EVI. 1/6.

Office of the A.L.A.

Seen and returned.

Assessment and payment of compensation.

Defence of India Rules, 1939. Rule 96.

Power to execute agreements under the Government of India Defence Department Notification No. 1514 OR/42, dated the 1st August 1942 implies power to negotiate a settlement of compensation after assessment. Consequently no separate empowerment for assessing compensation as stated by the Collector of Nasik would be necessary.

Sd/- P.M. LAD,
Remembrancer of Legal Affairs.

U. R. to R.D., No. 6139, dated the 1st July 1943

submitted for signature.

Id/- 30/6

A.A.S. Id/- 30/6

A.L.R. R.K. 30/6.

EVI. 1/6.

Defence of India Act, 1939
Section 19(1).

It appears that in the present case the land was first requisitioned and thereafter Government has proposed to acquire it. Consequently Government will have to pay the landlord compensation for use and occupation from the date of the requisition till the date of acquisition and thereafter compensation for acquiring the land. The form of agreement at pages 35-36 ante is intended to secure payments made on account pending the final determination of the amount of compensation whether by an agreement or under the provisions of law. Obviously, therefore, this form of agreement which is offered to the landlord for execution would not be quite appropriate. It will have to be suitably modified to suit the facts of this case.

2. The contention of the landlord that, the requisition as well as acquisition being void, he should be allowed to execute the agreement without prejudice to his contention, would hardly be acceptable. For, if the landlord is to dispute the legality of the requisition and acquisition, the question of determining the compensation would not arise. He should either go to the court to get the requisition and acquisition declared void or agree to accept compensation determined either by agreement or by arbitration. The view taken by R.D. on this point is correct.

3. Point (ii): The contention of the landlord appears to be valid. He is entitled to compensation from the date of his dispossession of the land. It is not open to Government to say that requisition should take

effect from a date different from the date of actual dispossession.

4. Point (iii): The Landlord is not doubt entitled to compensation from the date of his dispossession, that is to say, from 1-10-43, to the date of acquisition. What rate of interest should be allowed on this amount of compensation is a matter for settlement either by agreement or by arbitration.

5. On point (iv) the contention of the landlord is not without substance. Clause 4 of the agreement provides for a reference to arbitration even in respect of a matter arising out of the requisition, including the amount payable for compensation in respect of such requisition.

If the right of the parties to Statutory Arbitration under section 19 of the Defence of India is to be kept open the word "including" may be struck off.

The agreement as altered in pencil will meet the requirement of the case.

6. If the landlord is unwilling to agree to the amount of compensation proposed by the Collector, the only alternative open to Government would be to ask him to apply for a reference to arbitration.

Sd/- P.M. LAD, 29/7

Remembrancer of Legal Affairs.

U. R. to R.D. No. 7154, dated 30th July 1948.

EVY. 1/6.

Office of the R.L.A.

Clause (d) of the Finance Department (Supply) order No. 57(G)/XV-C, dated 25-1-1945 as amended from time to time does not prescribe the quantity of skim milk to be added to each cup of tea or coffee. Consequently the addition of even a token quantity of skim milk to a cup of tea would amount to compliance of clause (d) provided the customer is satisfied. In some cases such addition of a token quantity of skim milk to tea may be ~~the~~ intentional with a view to enable the customer to use fresh milk brought by him; but that does not involve the contravention of any law.

Sd/- P. M. LAD. 29/7

Remembrancer of Legal Affairs.

U. R. to M.C. No. 7116, dated the 29th July 1948.

Submitted for signature

S.B.
30/7
A.A.S. Sd/-
30/7

A.L.R. R.K.
30/7.

Issued

C.S.D.
30/7.

XVI. 1/8.

Office of the D.L.A.

Pay
Payment of
on compensation
awarded.

Defence of India
Act. Sec. 19(1).

Government will have pay reasonable interest on the amount of compensation from the date of vesting of the property in Government after acquisition.

Sd/- P.M. LAD. 29/9

Remembrancer of Legal Affairs.

U. R. to R.D., No. 9213, dated the 29th September 1948.

EVI. 1/8.